

(2018) 03 DEL CK 0172

In the Delhi High Court

Case No : W.P.(C) 8294 Of 2017 & CM 42891 Of 2017

Dinesh Singh Rawat

APPELLANT

Vs

Chairman, Ryan International School And Ors

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Citation : (2018) 03 DEL CK 0172

Hon'ble Judges : SUNIL GAUR

Bench : Single Bench

Advocate : Mr. Dilip Singh, Mr.Romy Chako, Mr.Chandan Kumar, Mr. Ashutosh Kaushik, Ms. Manika Tripathy Pandey

Final Decision : Disposed Of

Judgement

1.In the first round of litigation, consequent upon a departmental inquiry, penalty of dismissal was inflicted upon petitioner which he had challenged by way of an appeal before Delhi School Tribunal. Vide order of 17th October, 2016, the Delhi School Tribunal had set aside the penalty imposed upon petitioner and directed his reinstatement within four weeks. The said order was challenged by respondent herein by way of a writ petition which stood allowed vide order of 16th May, 2017 (Annexure P-2). The order (Annexure P-1) of Delhi School Tribunal was set aside and the matter was remanded back to the Disciplinary Committee to take a decision whether it will proceed against petitioner herein in departmental inquiry and if not, then the matter shall be treated as closed. This Court, vide order of 16th May, 2017 (Annexure P-2) had permitted the respondent to conduct the proceedings in terms of Rule 120 of the Delhi School Education Rules, 1973 and pass orders with regard to the post dismissal period.

2.The challenge in this petition is to an order of 4th July, 2017 passed by respondent-School whereby petitioner was suspended with retrospective

effect while denying back wages for the post dismissal period. In this petition, a direction is sought to respondent-school to pay full salary from the

date of earlier dismissal i.e. 20th February, 2013. Alongwith the writ petition, charge sheet of 4th July, 2017 (Annexure P-3) has been appended. In

the counter filed, there is no reference to any order of 4th July, 2017 regarding petitioner's suspension with retrospective effect and about denial

of back wages etc. Even petitioner has not placed on record any such order. So far as the issuance of charge sheet of 4th July, 2017 (Annexure P-3)

is concerned, it is in consonance with the order (Annexure P-2) of this Court. It is matter of record that petitioner was suspended way back in the

year 2012 when the inquiry was initiated against him and the suspension allowance etc. till the date of his dismissal has been paid to him. The question

of post dismissal period was required to be considered by respondent-school, in view of the directions issued by this Court in its order (Annexure P-2).

It is evident from the reply filed by respondent-school that the said aspect has not been dealt with by the respondent-school. The whole emphasis of

respondent-school in the counter filed is that in view of sub-Rule 4 of Rule 115 of Delhi School Education Rules, 1973, the charge sheet now issued is

part of further inquiry and so petitioner is deemed to be suspended from the initial date. On the contrary, petitioner's counsel asserts that the instant

case is not covered by sub-Rule 4 of Rule 115 of the Delhi School Education Rules, 1973 as the issuance of charge sheet of 4th July, 2017 amounts of

initiation of fresh inquiry and so, petitioner ought to be first reinstated and paid the back wages and thereafter the fresh inquiry can be initiated.

3. Upon hearing and on perusal of charge sheet of 4th July, 2017 and the material on record, I find that petitioner's representation against the

charge sheet of 4th July, 2017 (Annexure P-3) has been responded to by the respondent-school vide Reply (Annexure P-5) on 28th July, 2017 and its

perusal reveals that the directions of this Court in the order (Annexure P-2) regarding the period post dismissal has not been dealt with the proper

prospective. During the course of hearing, petitioner's counsel relied upon a decision of a Coordinate Bench of this Court in Ajay Singh Vs. Delhi

Police Public School & Ors. 2005 SCC OnLine Del 6 and another decision of a coordinate Bench of this Court in Ramesh Chander Dubey Vs.

Director of Education & Anr. 2009 SCC OnLine Del 554 to submit that sub-Rule 4 of Rule 115 of the Delhi School Education Rules, 1973 would not

apply as termination of service was without following the mandate of Rule 120 of the Delhi School Education Rules, 1973.

4. On the contrary, learned counsel for respondent-school relied upon *Supreme Court's* decision in *South Bengal State Transport Corporation*

Vs. Sapan Kumar Mitra & Ors. (2006) 2 SCC 584 to submit that when penalty is set aside on technical ground, then reinstatement with back wages

amounts to rewarding the dishonest and the guilty and results in stretching the concept of justice to an illogical limit.

5. After having gone through the decisions cited, I find that in *Ramesh Chander Dubey* (supra) and *Ajay Singh* (supra), no

inquiry was held and so it was rightly ruled that sub-Rule 4 of Rule 115 of the Delhi School Education Rules, 1973 would not apply. In the instant case,

inquiry was held and the penalty imposed upon petitioner was set aside because the Disciplinary Committee was not properly constituted and this

Court vide order (Annexure P-2) had permitted respondent-school to proceed with the inquiry. In the considered opinion of this Court, the instant case

would be covered under sub-Rule 4 of Rule 115 of the Delhi School Education Rules, 1973. However, respondent-school is required to pass a

speaking order within six weeks regarding the post dismissal period so far as payment of suspension allowance etc. is concerned.

6. In the facts and circumstances of this case, it is considered appropriate to direct the respondent-school to conclude the inquiry in pursuance to the

charge sheet of 4th July, 2017 (Annexure P-3) within a period of three months from the date already fixed. It is made clear that in case petitioner

causes delay in holding of the inquiry, then the aforesaid time limit will not bind the respondent-school.

7. With aforesaid directions, this petition and the application are disposed of. Copy of this order be given dasti to counsel for respondent-School to

ensure its compliance within the above stipulated time.